

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARLAND A. JONES,

Plaintiff,

v.

RICHARDS, et al.,

Defendants.

Case No. 1:20-cv-00639-SKO (PC)

**FINDINGS AND RECOMMENDATIONS
TO DENY PLAINTIFF'S MOTION TO
PROCEED *IN FORMA PAUPERIS* AND
DISMISS ACTION**

(Doc. 7)

14-DAY DEADLINE

Clerk of the Court to Assign a District Judge

Plaintiff Garland A. Jones, a state prisoner proceeding *pro se*, initiated this civil rights action on April 3, 2020. (Doc. 1.) Before the Court is Plaintiff's application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Doc. 7.) Because Plaintiff has three "strikes" under section 1915(g) and fails to show that he is in imminent danger of serious physical injury, the Court recommends that his application be denied and this action dismissed without prejudice.

I. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915

28 U.S.C. § 1915 governs *in forma pauperis* proceedings. The statute provides, "[i]n no event shall a prisoner bring a civil action ... under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger

of serious physical injury.” 28 U.S.C. § 1915(g).

II. DISCUSSION

The Court takes judicial notice of three of Plaintiff’s prior actions that were dismissed because they failed to state a claim on which relief can be granted¹: (1) *Jones v. Tolson, et al.*, No. 1:15-cv-01037-JDP (E.D. Cal.) (dismissed on September 14, 2015, for failure to state a claim); (2) *Jones v. Mailroom Officials, et al.*, No. 1:17-cv-00281-LJO-SKO (E.D. Cal) (dismissed on January 9, 2019, for failure to state a claim); (3) *Jones v. California Correctional Healthcare Services, et al.*, No. 2:17-cv-00738-WBS-DB (E.D. Cal) (dismissed on April 26, 2019, for failure to state a claim). All of these cases were dismissed before Plaintiff initiated the current action on April 3, 2020. Plaintiff is therefore precluded from proceeding *in forma pauperis* unless, at the time he filed his complaint, he was under imminent danger of serious physical injury. *See Andrews v. Cervantes*, 493 F.3d 1047, 1052-53 (9th Cir. 2007).

Plaintiff alleges the defendants failed to prevent his transfer to R.J. Donovan Correctional Facility despite “inmates with predatory behavior chronos” and “harassment by inmates and staff,” including staff’s issuance of “fraudulent RVRs.” (Doc. 1 at 3.) Plaintiff requests that the Court order prison staff to stop issuing false RVRs and halt all “mail violations.” (*See id.*) These allegations fail to show that Plaintiff is in imminent danger of serious physical injury.

III. CONCLUSION AND RECOMMENDATIONS

Based on the foregoing, the Court RECOMMENDS that:

1. Plaintiff’s motion to proceed *in forma pauperis* (Doc. 7) be DENIED; and,
2. This action be DISMISSED without prejudice to refile upon prepayment of the filing fee.

The Clerk of the Court is DIRECTED to assign a district judge to this action.

These Findings and Recommendations will be submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s

¹ The Court may take judicial notice of court records. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

Findings and Recommendations.” Plaintiff’s failure to file objections within the specified time may result in waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: May 28, 2020

/s/ Sheila K. Olerto
UNITED STATES MAGISTRATE JUDGE